IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2002

CORAM:

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.No.17093 of 2000

K. Govindaseshan ... Petitioner

vs.

1. The State of Tamilnadu
rep. by its Secretary to Govt.
Finance (Pension) Department
Fort St. George, Chennai-9.

2. The Secretary to Government of
Tamilnadu, Public (Special B)
Department, Fort St. George,
Chennai-9.

3. The Director of Pension,
D.M.S. Complex, Chennai-6.

4. The Pension Pay Officer,
College Road, Chennai-6. ... Respondents

Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorarified Mandamus as stated
therein.

For petitioner : Mr. M. Kemparaj

For respondents : Mrs.Thenmozhi Sivaperumal,
Government Advocate.

: O R D E R

Petitioner has filed the above writ petition praying to issue a Writ of Certiorarified Mandamus calling for the entire records leading to the passing of impugned letters on the file of the second respondent herein bearing No.3901/99 and 1256/2000-1 dated 7.2.2000 and 22.3.2000, respectively and quash the same as illegal and consequently direct the respondents herein to sanction the medical expenses incurred by the petitioner in terms of the orders governing the subject.

2. The case of the petitioner in brief is as follows:

The petitioner is a retired District Revenue Officer, aged 71 years; that he had undergone the preliminary phase of the special treatment for calculus Cholecystitics at Sundaram Medical Foundation Hospital at Chennai, in 1996 for which the third respondent sanctioned a sum of Rs.1181/- towards reimbursement of the medical expenses; that once again the petitioner had to get himself admitted in the said Hospital on 12.7.1998; that the petitioner underwent a special surgery of 'Laproscopic Cholcystectomy' on 29.7.1998 and for this, the petitioner had to incur a sum of Rs.23,951.30 towards medical expenses; that the petitioner preferred his claim in this regard before the third respondent through the fourth respondent on 17.8.1998; that the fourth respondent rejected his claim stating that the Hospital where he took treatment, does not find place in the list drawn up by the Government.

3. The petitioner would further submit that upto the age of 42 years, as a Government servant, he has not undergone any surgery or claimed any medical reimbursement for special treatment; that even after treatment in 1987 he had not undergone any surgery excepting the present one; that aggrieved by the rejection of his claim by the fourth respondent, the petitioner submitted a petition to the Government of Tamilnadu Finance (Pension) Department on 6.9.1999 and sought for the sanction of reimbursement of the medical expenses; that as this was negatived by the second respondent on 6.2.2000, the petitioner submitted an appeal to the Chief Minister of Tamilnadu by petition dated 1 6.2.2000, by furnishing all details; that this petition was also rejected by the second respondent on 20-3-2000 on the same grounds as stated in the earlier letter dated 7.2.2000; that the petitioner came to know from the impugned proceedings that he cannot enjoy the benefits of the Tamil Nadu Government Pensioners Health Fund and therefore, left with no option, has come to this Court with the above writ petition for the prayer extracted supra.

4. No counter has been filed on the part of the respondents.

5. During arguments, the learned counsel appearing on behalf of the petitioner would cite from the copy of G.O. Ms. No.562, dated 11.7.1995 Finance (Pension) Department (Government of Tamil Nadu) on the subject of medical aid Special Surgery/Treatment-Assistance to Pensioners-Constitution of Tamil Nadu Government Pensioner's Health Orders issued in Annexure-II, wherein it has introduced a Scheme to provide financial assistance to the pensioners for undergoing the special treatments/surgeries, but also constituted a fund called the Tamil Nadu Government Pensioners' Health Fund to be utilised for pensioners who have to undergo specialised major surgery/ treatment to private hospitals irrespective of whether such facility is available in Government hospital or not, each pensioner contributing a sum of Rs.5/= per annum to the fund and the Government getting this fund by its contributing Rs.5/= per pensioner.

6. The learned counsel would further read out the relevant passages from the guidelines of the Government of Tamil Nadu Pensioners' Health Fund, wherein it is contemplated that the Scheme shall apply to all the pensioners who draw pension....In addition, additional amount required to meet the expenditure for assistance from the fund will be provided by the Government....However, the Director of Pension is delegated with powers to sanction assistance for other treatments also. The Director of Pension is permitted to release assistance for treatments undergone in other private hospitals also after satisfying the genuineness of the treatment.

7. The learned counsel would also cite two judgments, the first one delivered in C.W.P. No.509 of 1998 in the case of Narendra Pal Sing Vs. Union of India, decided on 29.4.1999 by a single Judge of the Delhi High Court, following the judgment of the Apex Court reported in JT 1997 (1) S.C. 416 (State of Punjab & Ors. VS. Mohinder Singh Chawla etc.) wherein it is held as follows :
"It is always open for the Govt. to grant ex-post-facto sanction (Reference to the supreme corut judgement of Urjit Singh Vs State of Punjab) AIR 1996 SC 1388 ordered to settle the claim as per the rates admissible in 'Excorts Hospital'.
Law is therefore well settled that right to health is an integral part of life and Govt. has constitutional obligation to provide health facilities to its employees or retired employees and in case employee requires specialised treatment in an approved hospital, it is the duty of Govt. to bear or reimburse the expenses. He had to be operated in an emergency and in case he had waited for prior sanction, he might not have survived. It is the duty of Govt. to grant ex-postfacto sanction.
Other cases referred to : JT 1997 (i) SC 416 State of Pubjab & ors Vs Mohinder singh chawla etc."

8. On the contrary, the learned Government Advocate would submit that the orders of the Court cited by the petitioner are only suggestive and recommendatory in nature but also the held propositions, and therefore, so far as the facts of the petition are concerned, they are not applicable since the petitioner deviating from the guidelines especially as found in Annexure-III wherein a list of 21 hospitals have been named and the hospital in which the petitioner is said to have availed the medical assistance is not one, and therefore, the petitioner is not entitled to the assistance for the treatment said to have been undergone. On such grounds, the learned Government Advocate would pray to dismiss the writ petition.

9. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that the petitioner, who is a senior citizen claiming the financial assistance provided for under the Scheme of the Government of Tamil Nadu created by G.O. Ms.No.562, Finance (Pension) Department dated 11.7.1995, has come forward to file this writ petition praying to call for the entire records relating to the letters dated 7.2.2000 and 22.3.2000 respectively and quash the same as illegal

by issue of a writ of certiorarified mandamus and direct the respondents to reimburse to the petitioner the eligible amount under the Tamil Nadu Government Pensioners Health Fund as prayed for in his representations dated 06.9.1999 and 16.02.2000 respectively.

10. From the impugned communications dated 7.2.2000 and 22.3.2000 respectively, the Government of Tamil Nadu have rejected the request of the petitioner for the said medical assistance on ground that the hospital, viz., Sundaram Medical Foundation which he had undergone surgery is not included in the accredited list of hospitals under Tamilnadu Pensioner's Health Fund Scheme and further even the second time citing the same order, assigning the same reasons in the latter one, his plea had been rejected, and therefore, the petitioner prays for a direction to be issued to the respondent to reimburse the petitioner's eligibility amount under the Tamil Nadu Government Pensioner's Health Fund.

11. The strong objection raised on the part of the Government of Tamil Nadu for providing assistance under the said Scheme is that he had not taken the treatment in any one of the accredited institutions. However, as per Annexure-I whereunder guidelines have been provided for the fund, it is glaringly seen that the 'Director of Pension is permitted to release assistance for treatments undergone in other private hospitals also after satisfying the genuineness of the treatment.' This discretionary power has been conferred on the Director of pension, in spite of having specified in the list the types of surgeries in Annexure-II and the accredited institutions in Annexure-III. Therefore, no mention need be necessary that in spite of those which are mentioned in Annexure-III, the Director of Pension i.e. the third respondent herein is empowered with such powers by clause 3 of Annexure-I permitting him to release assistance for treatments undergone in other private hospitals also on satisfaction of the genuineness of the treatment.

12. So far as the case in hand is concerned, the genuineness of the treatment is not at all in dispute. The law has also permitted the third respondent to release assistance for treatments undergone in other private hospitals also (other than those specified under Annexure-III). Therefore, there is absolutely no impediment on the part of the respondents to sanction the medical assistance sought for by the petitioner, especially the third respondent in exercise of his discretion, which needs to be exercised in the warranting circumstances of the case, for which purpose alone the authority is clothed with such powers by the scheme which is binding on the third respondent within the meaning and import of the language employed in the extracted clause of the Scheme List supra. Wherever the authority is required to make use of the discretionary powers and the said authority does not exercise the same in the manner required, it would amount to negligence. There cannot be a more fitting case than the one in hand wherein the third respondent could exercise his discretion in the manner required by the Scheme Rules and the non-exercise would only mean shirking his responsibility. For all the above discussions held, it has become necessary to allow the writ

petition to its prayers, directing the respondents to reimburse the said amount of Rs.23,951.30 under the Tamil Nadu Government Pensioner's Health Fund.

In result,

(i) the above writ petition succeeds and the same is allowed as prayed for by the petitioner.

(ii) the respondents are hereby directed to reimburse the eligible amount, as indicated in the representations of the petitioner, from the Tamil Nadu Government Pensioners' Health Fund Scheme, within four weeks from the date of receipt of a copy of this order.

However, in the circumstances of the case, there shall be no order as to costs. C.M.P. No.24663 of 2000 is closed.

gs.
13.02.2002
Sd/-
ASSISTANT REGISTRAR.

// TRUE COPY //

SUB ASSISTANT REGISTRAR
To

1.The Secretary to Govt. of Tamilnadu Finance (Pension) Department Fort St. George, Chennai-9.

2.The Secretary to Government of Tamilnadu, Public (Special B) Department, Fort St. George, Chennai-9.

3.The Director of Pension, D.M.S. Complex, Chennai-6.

4.The Pension Pay Officer, College Road, Chennai-6.

V.KANAGARAJ,J.

W.P. No.17093 of 2000

13.02.2002